

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THE PHILLIES, a Pennsylvania limited partnership,

Plaintiff,

v.

HARRISON/ERICKSON,
INCORPORATED, a New York corporation,
HARRISON ERICKSON, a partnership, and
WAYDE HARRISON and BONNIE
ERICKSON,

Defendants.

CIVIL ACTION NO. 19-7239-VM-SN

JURY TRIAL DEMANDED

STIPULATED CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE

This matter is before the Court on the stipulation between Plaintiff and Counterclaim Defendant The Phillies, a Pennsylvania limited partnership (“The Phillies”), and Defendants and Counterclaim Plaintiffs Harrison/Erickson, Inc., a New York corporation, Harrison Erickson, a partnership, Wayde Harrison, and Bonnie Erickson (together, “HE”) (The Phillies and HE are collectively referred to as “the Parties”).

WHEREAS, the Parties had entered into an assignment agreement, short form assignment, and assignment dated October 31, 1984 relating to HE’s copyright in the Phillie Phanatic (collectively, “the 1984 Assignment”);

WHEREAS, HE sent The Phillies a notice of termination of the 1984 Assignment under Section 203 of the Copyright Act, dated June 1, 2018, which was to take effect on June 15, 2020, and which notice was filed with the Copyright Office;

WHEREAS, on August 2, 2019, The Phillies filed a complaint in the United States District Court for the Southern District of New York against HE captioned *The Phillies v. Harrison/Erickson, Incorporated et al.*, No. 1:19-cv-07239-VM-SN seeking declaratory and other relief relating to HE's termination rights under Section 203 of the Copyright Act ("the Litigation");

WHEREAS, on October 7, 2019, HE filed an answer to the complaint and asserted various counterclaims against The Phillies in the Litigation (Docket Entry No. 38);

WHEREAS, the Parties conducted discovery in the Litigation in 2019 and 2020;

WHEREAS, HE filed amended counterclaims against The Phillies on November 3, 2020 (Docket Entry No. 118) alleging, *inter alia*, copyright infringement;

WHEREAS, the Parties filed cross motions for summary judgment and partial summary judgment and The Phillies filed a motion to dismiss the amended counterclaims, which HE opposed (Docket Entry Nos. 124-129, 134-141, 148-153, 159-161);

WHEREAS, on August 10, 2021, Magistrate Judge Sarah Netburn issued a report and recommendation with regard to the Parties' cross motions for summary judgment and partial summary judgment and The Phillies' motion to dismiss the amended counterclaims (Docket Entry No. 165);

WHEREAS, the Parties have in good faith entered into a Confidential Settlement Agreement and Assignment to fully settle all of the Parties' claims and counterclaims in the Litigation;

WHEREAS, the Parties have conferred and agreed to resolve all matters arising from the allegations in the Litigation and consent to entry of this Stipulated Consent Judgment;

IT IS HEREBY STIPULATED, ORDERED, and DECREED as follows:

1. This Court has jurisdiction over the subject matter of this Litigation and has personal jurisdiction over the Parties, and venue is proper in this Court.
2. This Consent Judgment is a final adjudication on the merits as to the issues referred to herein and shall bind the Parties, their affiliates, successors, and assigns.
3. The redesigned Phanatic that had its debut on February 23, 2020 (“P2”) and the works identified in Exhibits A (Docket No. 127-23) and B (Docket Nos. 129-1, 129-2, 127-66, 127-30-35, 127-37, 127-39-42, 127-46, 127-47, 127-49, 127-51, 127-53-59) to this Consent Judgment are derivative works prepared by The Phillies under authority of the 1984 Assignment before June 15, 2020 in accordance with the requirements of 17 U.S.C. § 203(b)(1) and therefore can continue to be utilized by The Phillies and its licensees whether by reproduction, display, distribution, or public performance in any tangible medium of expression now known or later developed in accordance with the full scope of The Phillies’ rights under the 1984 Assignment. The Phillies’ and its licensees’ rights to continue to utilize those works will not terminate even if one or more of the provisions of the Confidential Settlement Agreement and Assignment are invalidated or terminated. The Parties intend for these findings to have collateral estoppel and res judicata effect on them and their successors, i.e., to bar future litigation on these issues.
4. This Stipulated Consent Judgment is binding upon the Parties, as well as upon their respective affiliates, successors, assigns, heirs, executors, administrators, personal representatives, trustees, subsidiaries, divisions, and parents.
5. This Stipulated Consent Judgment is intended to have collateral estoppel effect on the Parties, as well as upon their respective affiliates, successors, assigns, heirs, executors, administrators, personal representatives, trustees, subsidiaries, divisions, and parents.

6. All claims and counterclaims in the Litigation are hereby **DISMISSED WITH PREJUDICE**, with each Party to bear its own costs and attorneys' fees relating to the Litigation that were incurred on or before the date of this Stipulated Consent Judgment.

IT IS SO STIPULATED:

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Incorporated, Harrison Erickson, and Wayne
Harrison and Bonnie Erickson*

SO ORDERED AND ADJUDGED:

Dated: _____, 2021

Hon. Victor Marrero
United States District Judge